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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,737	03/22/2004	Harold D. Ochs	J&J-5074	9583
27777	7590	05/25/2007		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER RUNNING, RACHEL A	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 05/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/805,737

Applicant(s)

OCHS, HAROLD D.

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-15, 17-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15, 17-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/12/07</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 10-12, 14, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rice (US 2,872,929).

Rice discloses a dental floss device comprising a base portion (10b1) and a pair of spaced-apart arms extending from the base portion to accommodate a length of dental floss (see Figure 1). Each of the spaced-apart arms has a surface wherein one of the surfaces comprises a cavity (10c4) containing a flavored substance or active (column 2, lines 27-40). The cavity is on a lateral surface of the arm and is extending through the arm to form a hole (see Figure 5). The mechanism for containing the substance is a through hole that contains a tapered section that increases in diameter from the underside of the cavity through the spaced-apart arm (see Figure 5). The flavored substance or active is water/saliva soluble (see Figure 1; column 2, lines 27-40).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 and 21, 22, and 24 are rejected under 35 U.S.C. 103(a) as being obvious over Dougan et al (US 7,059,334) in view of Rice (US 2,872,929).

Dougan et al disclose a dental floss device comprising a handle (2), a dental floss holder (21), the handle having a gripping portion (2) and a head portion (3), the holder having a base portion and a pair of spaced-apart jaws (21) extending from the base portion, and a length of dental floss (5) (see Figures 1 and 2; column 3, lines 23-40). The base portion defines a tongue having lateral engaging surfaces; each engaging surface has at least one detent (11) (see Figures 3 (a-b)). The handle is integrally connected to the base of the dental floss holder (see Figure 1). The handle comprises a head portion and an elongated portion, the head portion has a releasable engagement between the handle and the floss holder, a portion for receiving the dental floss holder, and a transversely extending groove defined by a floor, lateral receiving walls, and terminal snap fit recessions, each of the receiving walls having at least one recess (see Figure 3(a); column 2, lines 1-10). The tongue of the dental floss holder engages the extending groove and the lateral engaging surfaces contact the lateral receiving walls (see Figure 1). The snap fit projections (11) of the space-apart jaws

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engage the terminal snap fit recessions of the head portion (see Figure 3(a)). Dougan et al disclose the claimed invention except for a cavity for adding substances, the handle and floss holder being made from a polypropylene material, the handle being made from a co-polyester material, the dental floss holder having one recess, and the handle having one detent.

Rice teaches a cavity (10c4) in the spaced-apart jaws having at least one cavity for adding flavored substances, or an active, and is water/saliva soluble (see Figure 1; column 2, lines 27-40). The mechanism for containing the substance is a through hole that contains a tapered section that increases in diameter from the underside of the cavity through the spaced- apart arm (see Figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made have the spaced-apart jaws of Dougan et al have a cavity for loading a flavor or an active agent as taught by Rice in order to release the composition while the users flosses their teeth.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the handle and dental floss holder be made from polypropylene and then handle being made from a co-polyester material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the dental floss holder have one recess and the handle have one detent, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 UPSQ 70.

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5. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being obvious over Rice (US 2,872,929) in view of Homola et al (U.S. Patent No. 5,980,868). Rice discloses the claimed invention except for the actives being water insoluble.

Homola et al. teach water insoluble dental components (column 11, lines 27-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the components of the combination of Rice be water insoluble in order to create a strong barrier on the tooth.

6. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rice (US 2,872,929). Rice discloses the claimed invention except for the active being a chemotherapeutic agent, the length of dental floss being a multi-filament yarn and a psudeo-monofilament yarn. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the floss from a multi-filament yarn or a pseudo-monofilament yarn, and the active a chemotherapeutic agent, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

7. Applicant's arguments filed March 5, 2007 have been fully considered but they are not persuasive.

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8. In response to applicant's argument that Rice does not disclose a cavity comprising a mechanism for retaining the substance within the cavity selected from the group consisting of protrusion extending into the cavity or above the cavity or through holes extending from an underside of the cavity through the spaced apart jaws, Rice does disclose through holes (10c4) in the spaced apart jaws as shown in Figure 5.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a stackable feature) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

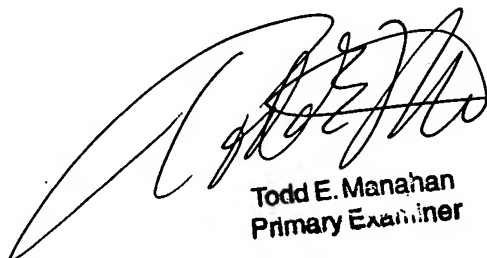
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Todd E. Manahan
Primary Examiner

Rachel A. Running
Examiner
Art Unit 3732

